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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,679	09/16/2003	Barry O'Brien	10527-462001	4092
26161	7590	08/16/2007	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			NGUYEN, VI X	
ART UNIT		PAPER NUMBER		
3734				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/664,679	O'BRIEN ET AL.	
Examiner	Art Unit		
Victor X. Nguyen	3734		

## ***Office Action Summary***

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 22 May 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-31 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-31 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/22/2007.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In **claims 1 and 24**, the disclosure does not describe “the hollow post shaped elements *having inner diameters smaller than the diameter of the generally tubular member*”. This limitation was presented in the amendment filed 5/22/2007 and yet only on page. 6 of applicant’s specification, lines 9-11 does mention “the inner diameter or aspect ratio of the post shaped elements and or the size can be varied which affects the diffusion rate from the reservoir”. However, it does not disclose that this hollow post shaped elements *having inner diameters smaller than the diameter of the generally tubular member* as is now claimed. Clarification is requested.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,11-12,15-21,24-28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Yan (5,843,172)

Yan discloses in figure 9, a stent device, including: a generally tubular member 70 has a diameter, where the member includes a porous structure comprising of titanium or tantalum or an alloy thereof (see col.4, lines 14-47), where the porous structure includes a hollow post shaped element(element 76 is considered as a post shape because it has a piece that is fixed firmly in an upright position as a support) having an inner diameters smaller than the diameter of the tubular member at best seen in fig. 9. As to claims2-5,11-12,15-21,24-28 and 31, Yan discloses (see col. 2 lines 46-66 and col.5, lines 1-54) the tubular member comprises a therapeutic agent which is selected from an antithrombogenic or antibiotic drug, where the porous structure includes a polymer which is coating over the structure, and where the porous structure is inherently including a colorant which enable the device to be visualized during implantation (see col.7, lines 21-50).

Claims 1 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ragheb et al (5,873,904)

Ragheb discloses in figures 4,5, a stent device, including: a generally tubular member 10 has a diameter, where the member includes a porous structure (20,24) comprising of titanium or tantalum or an alloy thereof (see col.3, lines 49-62), where the porous structure includes a hollow post shaped element(element 26 is considered as a post shape because it has a piece that is fixed firmly in an upright position as a support or a bridge) having an inner diameters smaller than the diameter of the tubular member at best seen in fig.5.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-10,13-14,22-23 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan (5,843,172).

Yan discloses the invention substantially as claimed, but Yan is silent regarding the tubular member includes a layer that has a thickness between 50nm and about 500 nm and the post shaped elements have pore diameters of about 20nm-200nm or a post height of about 100nm-200nm. It would have been obvious to modify the tubular member includes a layer that has a thickness between 50nm and about 500 nm and the post shaped elements have pore diameters of about 20nm-200nm or the post height of about 100nm-200nm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re. Aller, 220F, 2d 454, 105 USPQ 233. Furthermore, Yan is silent regarding the different metal is about 90% or more of the thickness of the tubular member or the device has a color corresponding to light having a wavelength between 370 nm –750 nm. It would have been obvious to modify the different metal is about 90% or more of the thickness of the tubular member or the device has a color corresponding to light having a wavelength between 370 nm –750 nm, since it has been held that

where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re. Aller*, 220F, 2d 454, 105 USPQ 233.

***Response to Arguments***

4. Applicant's arguments (filed 5/22/2007) with respect to claims 1 and 24 have been considered but are moot in view of the new ground(s) of rejection. Applicant is asked to please refer to the modified prior art rejection above where examiner addresses applicant's concerns regarding prior art rejections.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734



VN  
7/27/2007



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER